

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 293 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BOTAD TRANSPORT

Versus

MEMAN AMADBHAI DAUDBHAI

Appearance:

MR DD VYAS for Petitioner

MR MEHUL S SHAH for MR SM SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 13/06/2000

ORAL JUDGEMENT

This Civil Revision Application, under Section 29(2) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (same will be referred to as " the Act" hereinafter for the sake of brevity and convenience), is directed against the judgment Exh. 28 dt. 1st February, 1986 of District Judge, Surendranagar rendered in Regular

Civil Appeal No. 71 of 1982, whereby he was pleased to dismiss the said appeal by confirming a judgment Exh. 98 dt. 25th February, 1982 of Joint Civil Judge (J.D.), Surendranagar rendered in Regular Civil Suit No. 23 of 1977.

2. In this civil revision application, petitioner is the original defendant/tenant and opponent is the original plaintiff/landlord in Regular Civil Suit No. 23 of 1977. For the sake of convenience, the respective parties will be referred to as the plaintiff and the defendant hereafter.

3. The facts leading to this Civil Revision Application in a nutshell are as follows :-

Plaintiff has let two shops situated at the place opposite to Power House at Surendranagar to defendant at the monthly rent of Rs.80/- for each shop. Defendant is not paying the rent regularly, and therefore, defendant has become tenant in arrears of rent for more than six months, and therefore, plaintiff, by addressing a notice dt.9th October, 1976, terminated the tenancy of the defendant. As per the case of the plaintiff, on the date of notice, rent was due for the period from 1st February, 1976 to 30th September, 1976 and as per notice, he demanded Rs. 640/- as arrears of rent. The defendant neither vacated the suit shops, nor he gave reply to the suit notice. Thereafter the plaintiff filed Regular Civil Suit No. 23 of 1977 in the Court of Joint Civil Judge (J.D.) at Surendranagar for eviction of the suit premises on the ground of non-payment of arrears of rent for more than six months. He also demanded Rs.240/- as rent for the period from 1st October, 1976 to 1st December, 1976 in his plaint, the total of which comes to Rs. 1,760/-.

The defendant appeared before trial court and resisted the suit by filing written statement at Ex.60, wherein he has practically denied all the pleadings made by plff. in the plaint. It is the defence of the defendant that after receipt of notice, defendant's partner Chhabildas and their Mahetaji went to the father of the plaintiff who was collecting the rent to pay the rent due as stated in the notice, but father of the plaintiff replied that he would accept the rent after consulting their lawyer. On the basis of pleadings of both the parties, learned Judge of the trial court framed issues at Ex.24. Both the parties led their evidence oral as well as documentary in the case. After appreciating evidence of both the parties and after hearing arguments arguments of both the parties, the

learned Judge of the trial court was pleased to come to a conclusion that plaintiff has made out a case under Section 12(3)(a) of the Act, and hence the learned Judge of the trial court by rendering his judgment dt. 25th February, 1982 passed a decree of eviction directing the defendant to vacate the possession of the suit shops within three months. Defendant was so directed to pay the arrears of rent of Rs.1760/- and mesne profits of Rs.160/- per month from 1/1/1977 till the date of eviction, less already deposited in Court.

4. Being aggrieved against and dissatisfied with the said judgment, defendant preferred Regular Civil Appeal No. 71 of 1982 in the District Court at Surendranagar. The learned District Judge, after hearing the learned advocates of both the parties and after appreciating evidence led before the trial Court, came to a conclusion that plaintiff is entitled to a decree of possession of the suit shops on the ground of non-payment of arrears of rent for more than six months under Section 12(3)(a) of the Act and ultimately, the learned District Judge, by his judgment dt. 1st February, 1986 dismissed the appeal of the defendant, confirming the judgment of the trial court. As against that judgment dt. 1/2/1986 of the District Court, Surendranagar rendered in Regular Civil Appeal No. 71 of 1982, the defendant has preferred this Civil Revision Application under Section 29(2) of the Act.

5. Before I deal with submissions of rival parties, it would be necessary to know the ambit and scope and power of this court while dealing with this type of Civil Revision Application under Section 29(2) of the Act. As per Section 29(2) of the Act, this court has to call for the case in which such decision has been taken and after perusing the record, this court has to get itself satisfied that decision in appeal is according to law and if it is found that that decision is found not according to law, then and then this court can interfere with the decision of the appellate court.

In case of HELPER GIRDHARBHAI Vs. SAIYED MOHMAD MIRASAHEB KADRI AND OTHERS reported in (1987) 3 SCC 538, the revisional power of the High Court under Section 29(2) of the Bombay Rent Act is to ensue that the principles of law have been correctly borne in mind. Secondly, the facts have been properly appreciated and decision arrived at by taking into consideration all material and relevant facts in mind and it must be a such decision which a reasonable man could have arrived at.

As held in case of In case of PATEL VALMIK HIMATLAL AND OTHERS vs. PATEL MOHANLAL MULJIBHAI (DEAD THROUGH LRS.), reported in (1998) 7 SCC 383, the powers under Section 29(2) of the Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. It is further held that the mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction.

7. Keeping in mind the above legal position with regard to powers which can be exercised by this court in such type of civil revision application and scope of Section 29(2) of the Act, now I will discuss rival contentions of the revision petitioner.

8. At the outset, it is required to be noted that here in this case on hand, there is a concurrent finding of both the courts below on the point of defendant having become a tenant in arrears of rent for more than six months. Both the courts below have come to a definite conclusion based on legal evidence keeping in mind the legal position with regard to Section 12(3)(a) of the Act, that the plaintiff's case falls under Section 12(3)(a) of the Act.

9. During the course of arguments, Shri U.M.Panchal, the learned advocate for the revision petitioner submitted arguments on following two points:-

(1) As defendant was required to pay education cess along with the rent and further that education case is yearly payable, it should be said that the rent including education cess which was being paid by defendant/tenant, was yearly payable, and therefore, plaintiff's case falls under Section 12(3)(b) of the Act;

(2) Defendant had deposited all the due amount of rent in the trial court before passing of the decree by the trial court, and therefore, defendant is entitled to have a protection of this court under Section 12(3)(b) of the Act.

10. The arguments canvassed by Shri Panchal on the

aforesaid Point No.1 is with regard to education cess which defendant was paying along with rent. Admittedly every month, defendant was paying rent plus proportionate education cess to the plaintiff and plaintiff was issuing receipts for such payment of rent plus education cess. To day, this court has decided Civil Revision Application No. 292 of 1986. It was between the same parties which are parties before this court in the present Civil Revision Application No. 293 of 1986. That Civil Revision Application No.292 of 1986 is for one shop of the plaintiff, while this Civil Revision Application No. 293 of 1986 is for other two shops of the plaintiff. In that matter, Record and Proceedings had been called for and it was noticed that counter foils of receipts which were being issued by the plaintiff were for monthly rent and the monthly education cess. Therefore, education cess was a component of rent and therefore rent and education cess were being paid monthly, and therefore, in no case, it can be said that rent was yearly payable, and therefore, case falls under Section 12(3)(b) of the Act.

11. It may be noted that this type of pleadings is not there in written statement filed by the defendant in the suit before the trial court. No such type of dispute was taken by the defendant/appellant in Regular Civil Appeal No.71 of 1982. If we read judgment rendered in Regular Civil Appeal No. 71 of 1982, we find that defendant/tenant had taken only two disputes before the Appellate Court. One of the two disputes was to the effect that arrears of rent was tendered within one month from the date of receipt of notice and the plaintiff refused to accept it, and another point which was agitated in appeal by the defendant was to the effect that notice has not been served and the suit has not been filed against the real tenant, and therefore, contention taken in this revision was not at all taken by the defendant/tenant in appeal before the appellate court. As stated earlier, defendant has not taken such type of dispute with regard to education cess and further that rent was being paid yearwise in the written statement filed in the suit, and therefore, now no new case can be agitated by the defendant/tenant in this Civil Revision Application before this court.

12. As per arguments of Shri Panchal with regard to second point, he has submitted that defendant has deposited all the due amount of rent in the trial court before the learned trial Judge passed the decree. As discussed earlier, both the courts below have given their consistent and concurrent findings on the fact that case falls under Section 12(3)(a) of the Act. The fact that

defendant has deposited all the due amount in the trial court before the learned trial Judge passed a decree has no relevancy in this matter, because as held in case of RATILAL BALABHAI NAZAR v. RANCHHODBHAI SHANKERBHAI PATEL AND OTHERS, reported in (1968) 9 GLR P.48 , Division Bench of this court has set out four conditions which are required to be satisfied by the landlord, if he comes with the case that his case falls under Section 12(3)(a) of the Act. Those four conditions can be summarised as follows :

(1) the rent must be payable by the month; (2) there must be no dispute regarding the standard rent or permitted increases right upto the expiration of a period of one month from the date of the notice under sec.12(2); (3) the rent must be in arrears for a period of six months or more at the date of such notice; and (4) the tenant must neglect to make payment of such arrears until the expiration of a period of one month after the date of such notice.

It is of no use to argue that tenant has deposited all the due amount in the trial court before trial court passed a decree. As per one of the aforesaid four conditions, the tenant is required to make payment of arrears of rent of more than six months before expiration of period of one month after the date of notice under section 12(2) of the Act. It is not the case of the defendant/tenant that he had paid all the amount of rent due within one month from the date of receipt of the notice, and therefore, this second argument cannot be accepted, because both the courts below have affirmatively held that plaintiff's case falls under Section 12(3)(a) of the Act.

Shri Mehul S. Shah has argued that for a moment if it is believed that case of defendant falls under Section 12(3)(b) of the Act, then it is the duty of the defendant to satisfy three conditions which are set out by this court in case of TARABEN SAKARLAL SHAH Vs. SHAH JETHABHAI MAGANLAL reported in (1974) 15 G.L.R. P 567. One of the conditions to satisfy the requirements to prove the case under Section 12(3)(b) of the Act, is to continue to pay or tenders in court regularly such rent or permitted increases till the suit is finally decided. Herein this case, defendant has not deposited rent in trial court regularly. As observed by the appellate Judge in Para 12 on Pages 22 -23 of his judgment, defendant deposited rent in the court irregularly, not monthwise. He deposited the rent at the intervals of

two, three or four months and in one case even after five months, and therefore, it cannot be said that the defendant has deposited the rent regularly. As held in case of GANPAT LADHA vs SASHIKANT VISHNU SHINDE reported in (1978) 19 GLR Page 502, the Hon'ble Supreme Court has held that conditions mentioned in Section 12(3)(b) of the Act must be strictly observed for seeking its benefit. It is also held that Section 12(3)(b) of the Act does not create any discretionary jurisdiction in the court which provides protection to a tenant on certain conditions and those conditions are strictly observed by the tenant who seeks benefit of this section, and therefore, condition referred to hereinabove to prove the case under Section 12(3)(b) of the Act is mandatory in nature.

In case of MRANALINI B. SHAH & Anr. Vs. BAPALAL MOHANLAL SHAH, reported in (1978) 19 GLR Page 1090, the Hon'ble Supreme Court has held that expression " regularly " used in Section 12(3)(b) of the Act is mandatory and not directory and if payment is made regularly, it must be held regularly and if payment is made at the intervals of two, three or four months, then it cannot be considered regularly and in such type of cases, court has no discretion, if this provision of Section 12(3)(b) of the Act is not complied with, and therefore, in no case, defendant's case falls under Section 12(3)(b) of the act.

As discussed hereinabove, both the courts below have given a concurrent and consistent findings that plaintiff's case falls under Section 12(3)(a) of the Act, and plaintiff has fully satisfied four conditions to prove his case under Section 12(3)(a) of the Act, the case advanced by the defendant has been negatived by both the courts below. Thus, the case of the plaintiff to obtain a decree for possession of the suit premises under Section 12(3)(a) of the Act is proved. I have gone through the judgment and decree of both the courts below and I find that in no case, it can be said that both judgments are contrary to law. I find no errors committed in the judgments so that it can be said that such errors go to the roof of the decision. This court is satisfied that plaintiff's case decided by both the courts below is according to law, and therefore, there is no reason to disturb the findings arrived at by both the courts below.

In the result, therefore, this Civil Revision Application fails as there is no merits in the case. The Civil Revision Application deserves to be dismissed and is accordingly dismissed. Rule is discharged, with no

order as to costs. Interim relief granted on 28th
February, 1986 stands vacated.

Date: 13/6/2000. (H.H.MEHTA, J.)
ccshah